



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,856	09/17/2003	Robert Choi	KRN 318C	5777
23581	7590	07/18/2006	EXAMINER	
KOLISCH HARTWELL, P.C. 200 PACIFIC BUILDING 520 SW YAMHILL STREET PORTLAND, OR 97204			CARTAGENA, MELVIN A	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 07/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/666,856

Applicant(s)

CHOI ET AL.

Examiner

Melvin A. Cartagena

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 13-22 and 34-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 13-22 and 34-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10222004&7112005&4</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 27, 2006 has been entered.

Claim Rejections - 35 USC § 112

2. Claims 13-20, 34 and 40-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 34 and 46 recite the limitation "a bite-actuated mouthpiece" in line 2 and lines 2 and 3 respectively. Since claims 1 and 35 recite "a bite-actuated mouthpiece" or alternatively a gas mask, is not clear if the "bite-actuated mouthpiece" of claims 34 and 46 is a double inclusion of the "bite-actuated mouthpiece" claimed in claims 1 and 35.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3754

4. Claims 1-10, 13, 21, 22 and 35-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,712,594 to Schneider in view of US 6,239,210 to Kim et al.

Schneider shows a liquid storage and delivery system as seen in Figs. 1, 10, 11, 12 and 13 having a flexible fluid reservoir 82 adapted to receive a volume of drinking fluid, a fill port 83, exit ports 84, an elongated downstream assembly 65 in fluid communication with an exit port 71, a fitting 68 adapted to interconnect with a gas mask 10, connectors 64, 65 and 66, an elongated downstream assembly 19 in fluid communication with an exit port 11, a mouth piece, see column 2, lines 37-42. Schneider is silent about the flexible fluid reservoir made of a clear material containing ethylene vinyl alcohol layer with at least one waterproof layer on each side. Kim shows a clear reservoir made with a clear gas resistant layer containing ethylene vinyl alcohol layered with a waterproof heat-sealable polyester layer on each side. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to make the reservoir of Schneider using a multilaminate material as taught by Kim to give the ethylene vinyl alcohol containing layer additional structural strength, see column 1, lines 40-47.

With respect to the product by process limitation in claims 3 and 10, see MPEP 2113: “[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

With respect to the thickness and the resistance to the chemical exposure of the layers as claimed in claims 4-9 and 36-38, it would have been obvious to a person with ordinary skill in the art at the time the invention was made to make the layers of a suitable thickness to provide adequate protection according to the level of chemical in the hazardous environment where the device is to be used and inherently a thicker layer would tend to resist longer exposure to the hazardous environment, in addition it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art, as per MPEP 2144.05.

5. Claims 14-20 and 41-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,712,594 to Schneider as modify by US 6,239,210 to Kim et al. as applied to claims 1 and 35 above, and further in view of US 5,374,088 to Moretti et al.

The Schneider-Kim combination shows all claimed features as discussed above except for the details of the quick connector having a resilient ring engaged with a female coupling. Moretti shows a quick-release connector as seen in Figs. 5, 8 and 9 having a male and female members 3 and 12 respectively, a resilient lock ring 2 inserted into cavity 11 of the female member that are spaced apart, the resilient ring locks the male member in place with supports 13, the female member also includes walls 21 that act as guards to prevent accidental release of the coupling, see column 4, lines 22-27. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to use the quick-connector of Moretti in the device of the Schneider-Kim combination to reduce the time it takes to engage the protective gear with the proper attachments in an emergency and reduce the risk of espousing the user to hazardous environments.

Art Unit: 3754

6. Claims 34 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,712,594 to Schneider as modify by US 6,239,210 to Kim et al. as applied to claims 1 and 35 above, and further in view of US 6,279,772 to Bowman.

The Schneider-Kim combination shows all claimed features as discussed above but is silent about the mouthpiece being resilient and self-sealing. Bowman shows a resilient bite valve as seen in Fig. 1. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to use the bite-actuated valve of Bowman in the device of the Schneider-Kim combination to create a liquid dispensing unit that maintain a fluid column in a delivery tube from a fluid reservoir to the fluid dispensing unit under negative and positive static state of pressure on the liquid dispensing unit as taught by Bowman.

Response to Arguments

7. Applicant's arguments with respect to claims 1-13 and 21-33 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sausner shows a rapid-action coupling for hoses. Potash shows a canteen for use with a gas mask.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (571) 272-4924. The examiner can normally be reached on T-F (7:30AM to 6:00 PM).

Art Unit: 3754

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MAC 7/05/06
MAC


ERIC KEASEL
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700